ORIGINAL

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September 24, 2002

EX PARTE
REDACTED -- FOR PUBLIC INSPECTION

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
Room TW-A325
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: CC Docket Nos. 01-338, 96-98, 98-147

Dear Ms. Dortch:

On September 23, 2002, Scott Sawyer and David A. Graham of Conversent Communications, LLC, as well as Christi Shewman and Thomas Jones of Willkie Farr & Gallagher met with the members of the Wireline Competition Bureau listed on the attached attendance list to discuss Conversent's network and need for unbundled dark fiber and high-capacity loops. The attached presentations were distributed at the meeting and comprised the basis for the Conversent Communications presentation.

Pursuant to Section 1.1206(b)(2) of the Commission's rules, 47 C.F.R. § 1.1206(b)(2), and the Protective Order in CC Docket Nos. 01-338, 96-98, 98-147, 17 FCC Rcd 5852 (WCB 2002), this redacted, public version of the letter and a copy are being filed for inclusion in the public record of the above-referenced proceedings. In addition, we have filed one copy of the unredacted, confidential version of this filing under separate cover with the Secretary of the Commission.

Sincerely,

Christi Shewman

Enclosures

cc: Janice Myles (confidential version only)
Michelle Carey (public version only)

Attendance

Name	Company/Bureau
Scott Sawyer	Conversent Communications, LLC
David A. Graham	Conversent Communications, LLC
Thomas Jones	Willkie Farr & Gallagher
Christi Shewman	Willkie Farr & Gallagher
Michelle Carey	Wireline Competition Bureau
Jeremy Miller	Wireline Competition Bureau
Robert Tanner	Wireline Competition Bureau
Tom Navin	Wireline Competition Bureau
Shanti Gupta	Office of Engineering & Technology
Kimberly VanderHaar	Wireline Competition Bureau
Ian Dillner	Wireline Competition Bureau
Mike Engel	Wireline Competition Bureau
Ben Childers	Wireline Competition Bureau
Daniel Shiman	Wireline Competition Bureau
Julie Veach	Wireline Competition Bureau
Gina Spade	Wireline Competition Bureau
Claudia Pabo	Wireline Competition Bureau
Jerry Stanshine	Office of Engineering & Technology

CONVERSENT COMMUNICATIONS, LLC
TALKING POINTS IN FCC TRIENNIAL REVIEW PROCEEDING

I. DESCRIPTION OF CONVERSENT COMMUNICATIONS, LLC

- Conversent Communications, LLC ("Conversent") is headquartered in Marlborough, Massachusetts and has CLEC subsidiaries in Massachusetts, Rhode Island, New Hampshire, Maine, New York, Connecticut and New Jersey.

- Conversent provides local and long distance voice and broadband services to small and medium sized business customers in small cities and suburbs.

- The average Conversent customer has approximately 7 lines and many Conversent customers have only a single business line.

- Although it has been providing service only since the fall of 1999, Conversent currently has over 20,000 customers and over 140,000 access lines in its 7-state footprint.

- Conversent has 775 employees.

- Conversent is currently EBITDA positive and anticipates that it will be free cash flow positive during the second quarter of 2003.

- Conversent has found that it can efficiently provide voice and broadband services to small businesses in small cities and in suburban areas by relying on its own switch and collocated transmission equipment and by leasing collocation space, unbundled loops and unbundled interoffice dark fiber transport from the ILEC.

- The availability of unbundled IOF dark fiber enables Conversent to reach small cities and suburbs throughout its 7-state region. Prior to the availability of unbundled IOF dark fiber, it was not economical for facilities-based CLECs to reach customers in these areas.

- In addition to providing voice services, Conversent uses unbundled loops and unbundled IOF dark fiber to provide two kinds of broadband service: SDSL and DS-1 service, including integrated DS-1 service.

II. CONVERSENT INCURS SIGNIFICANT COSTS TO OBTAIN UNES THAT THE D.C. CIRCUIT COURT FAILED TO CONSIDER

A. Conversent has Spent Millions of Dollars in Order to Obtain Access to Unbundled Loops and Unbundled IOF Dark Fiber

- Collocation is generally a prerequisite for purchasing unbundled loops and unbundled IOF dark fiber. Conversent has collocated in over 125 ILEC central offices in order to be able to purchase loops and unbundled IOF dark fiber.

- Conversent has already paid Verizon and SNET over $11.5M in charges for collocation arrangements.

- In addition to paying the ILECs for collocation, Conversent has incurred substantial costs in purchasing and installing the transmission equipment that it deploys in its collocation arrangements. To date, Conversent has spent over $30M in capital costs for purchasing such equipment.

- Conversent has also spent several millions of dollars to develop and operate office support systems in connection with unbundled network elements. This includes the capital and operating costs for preordering, ordering, maintenance, repair and billing associated with UNEs. This does not count the several millions of dollars that Conversent has invested in OSS in order to be able to bill its own customers.

B. Verizon Increases the Cost of UNEs to Conversent Through the Exercise of Market Power

1. Verizon's Inaccurate Bills Increase Conversent's Costs

- The bills for UNEs that Verizon has submitted to Conversent have contained staggering overcharges. As a result, Conversent has been required to incur over $1M to date to hire an entire department just to review ILEC bills for accuracy, to file billing disputes, and to escalate such disputes.

2. Verizon's Rejection of DS-1 and UNE Loops For "No Facilities" Increases Conversent's Costs and Decreases its Revenue

- Verizon has frustrated Conversent's efforts to obtain access to DS-1 UNE loops. This is because approximately a year ago Verizon began rejecting a large number of Conversent's DS-1 UNE loop orders on the grounds that no facilities are available. For example, of Conversent's pending orders in July of 2002, Verizon rejected 37.2% of Conversent's DS-1 UNE loop orders in Massachusetts; 46.4% of its orders in Rhode Island and New York and 67.3% of its orders in New Jersey.

- The most common reason that Verizon rejects DS-1 UNE loop orders is that Verizon would have to install a new repeater case. Conversent does not believe that having to install a new repeater case is a sufficient reason to reject an order for a DS-1 UNE loop.

- For those DS-1 UNE loop orders that are rejected, Conversent must order the same facility as a special access circuit. This causes substantial delay (on average, approximately 34 days) in providing service to Conversent's customers. It also increases Conversent's cost because the rates for special access circuits are far higher than for UNE loops.

- Indeed, having to pay special access rates for DS-1 loops on top of Conversent's already substantial costs for collocation would not permit Conversent to compete in the provision of broadband services in the second and third tier markets in which it operates.

- Therefore, Conversent must convert special access circuits to UNEs as quickly as possible. After a three month period, Verizon permits Conversent to convert a special access circuit to DS-1 UNE loop.

- Unfortunately, Verizon has repeatedly and consistently overbilled Conversent by continuing to charge Conversent at special access rates after the conversion of special access circuits to UNEs.

- Verizon's continuous efforts to eliminate or limit Conversent's access to unbundled dark fiber and high capacity loops destabilizes Conversent's operations, creates uncertainty about its business plan, and makes it difficult to obtain access to capital.

III. CONVERSENT WOULD BE IMPAIRED WITHOUT UNBUNDLED DARK FIBER

- Neither procuring interoffice fiber from third party vendors nor installing it through self-provisioning constitutes a reasonable substitute for unbundled IOF dark fiber.

- Conversent does purchase long-haul fiber from third party vendors, but at this point in time these third party vendors do not usually offer a substitute for unbundled IOF dark fiber.

- At this stage of the market, third party vendors do not have fiber available in the locations where Conversent needs it - - between ILEC central offices.

  - In Eastern Massachusetts access to IOF from third party vendors is only available for 12 of Conversent's 75 interoffice spans.

  - In Rhode Island, access to IOF from third party vendors is only available for 4 of Conversent's 11 interoffice spans.

  - In New Hampshire, access to IOF from third party vendors is only available for 2 of Conversent's 8 interoffice spans.

  - In Maine, access to IOF from third party vendors is not available for any of Conversent's 4 interoffice spans.

  - In New York, access to IOF from third party vendors is only available for 2 of Conversent's 18 interoffice spans.

  - In New Jersey, access to IOF from third party vendors is not present for any of Conversent's 18 interoffice spans.

- In Connecticut, access to IOF from third party vendors will soon be available in 5 of Conversent's 32 interoffice spans.

- Self-provisioning of interoffice dark fiber is time consuming and expensive. If Conversent were required to replicate its 609 route mile SONET ring in Eastern Massachusetts by installing its own fiber in Verizon conduit, it would cost Conversent approximately $30M.

- If conduit were not available, the cost to replicate Conversent's Eastern Massachusetts network alone would amount to approximately $81M.

- Conversent simply does not have the access to capital at a price that makes it possible to self-provision its network in Eastern Massachusetts efficiently.

- It is patently unfair for the ILECs to seek to remove unbundled loops and IOF dark fiber as UNEs after Conversent has invested millions of dollars in order to be able to obtain them.

- It would be bad public policy for the FCC to change course in midstream and rule that ILECs no longer have the obligation to provide such unbundled loops and unbundled IOF dark fiber after Conversent has relied on the FCC's unbundling rules to enter 7 markets.

IV. CONVERSENT WOULD BE IMPAIRED WITHOUT ACCESS TO HIGH CAPACITY LOOPS

- Conversent's customers prefer SDSL service and integrated DS-1 service over Verizon's less expensive ADSL and cable modem services because SDSL/integrated DS-1 services offer greater bandwidth upstream and greater reliability.
  - Verizon's ADSL service provides bandwidth downstream (access to internet) but not upstream.
  - Cable modem service is generally provided over a shared network; it does not deliver reliable bandwidth needed by many businesses.
  - For a doctor's office or graphics firm (two representative examples), that must send videos, images, large files or video conferencing from its office to other locations, a higher bandwidth upstream and more reliable bandwidth is critical.
  - Cable modem and ADSL services are generally priced considerably lower than SDSL and integrated DS-1 service.
- There is not significant intermodal competition in the provision of services that are substitutes for SDSL and integrated DS-1 services.
  - Most of the competition that Conversent faces for broadband comes from other facilities-based CLECs that are dependent upon the ILEC for access to unbundled loops.
  - Conversent has faced little, if any, competition for broadband from cable companies in its 7-state region.
  - Conversent has not faced any competition from fixed wireless broadband providers.
- High-capacity loops are classic bottleneck facilities.
- If unbundled dark fiber and unbundled loops were no longer available to be used in connection with broadband services, most of Conversent's customers would no longer be able to obtain SDSL service and integrated DS-1 service from <u>any</u> source.
- This is because, in most geographic markets, neither Verizon nor the cable companies have products that compete directly with Conversent's SDSL and integrated DS-1 services.

V. TELRIC METHODOLOGY PROVIDES ENOUGH FLEXIBILITY TO ADJUST RATES TO REFLECT THE RISKS OF NEW FACILITIES INVESTMENT AND COMPETITION

- Cost of capital can be adjusted upward (or downward) where appropriate in light of the risks of investment (e.g., facilities-based competition and uncertain end user demand).

- Depreciation lives can also be shortened (or lengthened) as appropriate in light of technological dynamism and competition.

- The ILECs are able to address these issues in state TELRIC proceedings; there is no need for the Commission to make any adjustments in the Triennial Review.

VI. CONVERSENT NEEDS REGULATORY CERTAINTY

- The primary threat to Conversent's viability is the lack of regulatory certainty about interoffice transport and high capacity loops.

- Verizon is redoubling its efforts to frustrate facilities-based competition. At the same time that Verizon is seeking to eliminate UNE-P as an entry strategy in favor of more facilities-based entry, Verizon is actively seeking to increase the costs of facilities-based carriers and to destabilize their business plans by removing access to interoffice transport and high capacity loops.

- If unbundled dark fiber and high capacity loops are no longer UNEs, Conversent will no longer be able to serve most of its customers.

- If unbundled loops are no longer available to be used in connection with broadband services, most of Conversent's customers in its 7-state service area will no longer be able to obtain SDSL service and integrated DS-1 service.

- This is because neither Verizon, nor the cable companies, have products that compete directly with Conversent's SDSL and integrated DS-1 services.

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